

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ALIA MAGEB QASEM AL-ATRI, et al.,

Plaintiffs,

v.

MONICA B. LUGO, et al.,

Defendants.

Case No. 1:20-cv-01556-JLT-EPG

FINDINGS AND RECOMMENDATIONS,  
RECOMMENDING THAT:

PLAINTIFFS' MOTION FOR LEAVE TO  
AMEND TO FILE A FOURTH AMENDED  
COMPLAINT BE GRANTED IN PART, and

DEFENDANTS' MOTION FOR 12(B)(1)  
DISMISSAL OF PLAINTIFF'S THIRD  
AMENDED COMPLAINT BE DENIED AS  
MOOT.

(ECF Nos. 96 and 101)

OBJECTIONS, IF ANY, DUE WITHIN  
THIRTY DAYS

In this lawsuit, Plaintiffs Muneera Nasr Ali Abdullah ("Muneera"), Alia Mageb Qasem Al-Atri ("Alia"), and Ramzi Mageb Qasem Al-Atri ("Ramzi")<sup>1</sup> assert federal statutory and constitutional claims arising from the denial of Alia and Ramzi's N-600K Applications for Citizenship and Issuance of Certificate ("N-600K applications") and the revocation of Muneera's United States passport.

Before the Court is Plaintiffs' motion for leave to amend (ECF No. 101) to file their proposed Fourth Amended Complaint (ECF No. 101-1). Also before the Court is Defendants'

<sup>1</sup> Alia and Ramzi were minors at the time this lawsuit was filed in 2020, and earlier filings in this matter refer to these Plaintiffs by their initials, A.M.Q.A. and R.M.Q.A. (See ECF No. 112).

1 motion to dismiss the Third Amended Complaint. (ECF No. 96). Both motions were referred to  
 2 the undersigned for issuance of findings and recommendations. (ECF Nos. 104, 107). On  
 3 September 27, 2024, the Court held a hearing on the motions. (ECF No. 110).

4 For the reasons set forth below, the Court recommends granting Plaintiffs' motion for  
 5 leave to amend in part and denying Defendants' motion to dismiss as moot.

## 6 **I. BACKGROUND**

### 7 **A. Plaintiffs' Initial Complaint**

8 On October 30, 2020, Muneera, her four children – Alia, Ramzi, N.M.Q.A.(1), and  
 9 N.M.Q.A.(2) – and Muneera's father, Nassar Ali Abdullah Mohamed ("Nassar"), filed this  
 10 lawsuit for declaratory and injunctive relief against: United States Citizenship and Immigration  
 11 Services ("USCIS"), USCIS Acting Director Kenneth Cuccinelli, USCIS Western District  
 12 Director Monica Toro, USCIS Fresno Field Office, and Monica B. Lugo (collectively, "USCIS  
 13 Defendants").<sup>2</sup> (ECF No. 1). At the time the initial complaint was filed, Nassar lived in Fresno,  
 14 California, and Muneera lived in Yemen with her children, all of whom were minors at the time.  
 15 (Id. at 6).

16 In their initial complaint, Plaintiffs alleged that Muneera derived her United States  
 17 citizenship through her U.S. citizen father, Nassar, and obtained a U.S. passport in August 2017.  
 18 (Id. at 2). In January 2018, Muneera filed N-600K applications on behalf of her four children  
 19 seeking citizenship under Section 322 of the Immigration and Nationality Act ("INA") and 8  
 20 U.S.C. § 1433(a). (Id. at 3). Plaintiffs alleged that all four children were eligible for United States  
 21 citizenship,<sup>3</sup> but their N-600K applications were wrongly denied on November 9, 2018. (Id. at 5,  
 22 9). Plaintiffs asserted that the denial of the N-600K applications violated the Administrative

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23 <sup>2</sup> Plaintiffs Nassar, N.M.Q.A.(1) and N.M.Q.A.(2) are no longer parties in this lawsuit. (See ECF No. 112  
 24 (order dismissing Nassar, N.M.Q.A.(1) and N.M.Q.A.(2) based on their notice (ECF No. 111) stating that  
 25 they do not oppose dismissal as they "no longer have active claims that warrant their continued  
 involvement in this matter")).

26 <sup>3</sup> Plaintiffs specifically asserted that the children were eligible for citizenship under INA § 322 because:  
 27 (1) they were born outside the United States in Yemen; (2) they are under 18 years of age;  
 28 (3) their mother is a US citizen; (4) their US citizen grandparent has been physically  
 present in the United States of five years, at least five of which were after turning age 14;  
 and (5) they are residing outside of the United States in the legal and physical custody of  
 the U.S. citizen parent, their mother, Plaintiff Muneera.  
 (ECF No. 1 at 3 (internal citations omitted)).

1 Procedures Act (“APA”) and their procedural due process rights under the Fifth Amendment. (Id.  
2 at 12–16).

3 Shortly after Plaintiffs commenced this lawsuit, USCIS administratively reopened the N-  
4 600K applications. (ECF No. 7). As a result, the USCIS Defendants requested an extension of  
5 time to respond to Plaintiffs’ initial complaint, noting that further proceedings at the  
6 administrative level were expected. (Id.) The Court granted the request and extended the time for  
7 the USCIS Defendants to respond to the complaint to March 15, 2021. (ECF No. 8). The Court  
8 subsequently granted additional extensions because administrative proceedings remained  
9 ongoing. (ECF Nos. 11, 13, 19).

10 On June 30, 2021, the USCIS Defendants moved to dismiss Plaintiffs’ initial complaint.  
11 (ECF Nos. 20, 21). On July 21, 2021, the Court granted the parties’ joint motion to stay the case  
12 until USCIS issued final decisions on the reopened N-600K applications. (ECF No. 24).

13 Approximately six months later, the parties filed a joint status report indicating that USCIS had  
14 issued final decisions denying the reopened N-600K applications on January 10, 2022, and that  
15 Plaintiffs intended to file an amended complaint in this lawsuit. (ECF No. 33 at 4). The report  
16 also noted that the USCIS Defendants did not oppose Plaintiffs’ request for leave to amend. (Id.)  
17 Based on the parties’ representations, the Court granted Plaintiffs leave to file a first amended  
18 complaint. (ECF No. 34).

### 18 **B. First and Second Amended Complaints**

19 Plaintiffs filed their First Amended Complaint on March 9, 2022. (ECF No. 40). In the  
20 First Amended Complaint, Plaintiffs added a sixth defendant, USCIS Fresno Field Office  
21 Director Lynn Feldman, in addition to the five USCIS Defendants previously named in the initial  
22 complaint. (ECF No. 40 at 6–7). Plaintiffs asserted violations of the APA as well as their equal  
23 protection and due process rights under the Fifth Amendment. (Id. at 16–53).

24 The day after the First Amended Complaint was filed, the United States Department of  
25 State (“the State Department”) revoked Muneera’s U.S. passport. (ECF No. 43). On June 6, 2022,  
26 Plaintiffs sought leave to file a second amended complaint, which the USCIS Defendants did not  
27 oppose. (ECF Nos. 51, 58). The Court granted Plaintiffs’ motion for leave to amend (ECF No.  
28 60), and on August 18, 2022, Plaintiffs filed their Second Amended Complaint (ECF No. 61).

1 In the Second Amended Complaint, Plaintiffs named the USCIS Defendants and the  
 2 following as defendants: the State Department; Secretary of State Antony J. Blinken; National  
 3 Passport Center Director Karen Pizza; Diplomatic Security Service Special Agent “John Doe”;  
 4 and Does 1-15 (collectively, the “State Department Defendants”). (ECF No. 61). Plaintiffs raised  
 5 twelve claims in the Second Amended Complaint stemming from the denial of the N-600K  
 6 applications and the recent revocation of Muneera’s passport. (*Id.*)

7 On October 21, 2022, Defendants moved to dismiss the Second Amended Complaint.  
 8 (ECF No. 65). Due to three stipulated extensions of time (ECF Nos. 69, 71, 74), briefing was not  
 9 yet complete on the motion to dismiss when Plaintiffs filed a motion for leave to amend. (ECF  
 10 Nos. 75). In their motion, Plaintiffs asserted that amendment was necessary because the State  
 11 Department had issued an amended revocation notice “adopt[ing] additional grounds [supporting]  
 12 revocation of [Muneera’s] passport” after the Second Amended Complaint was filed. (*Id.* at 2).  
 13 Defendants did not oppose Plaintiffs’ motion for leave to amend. (ECF No. 76 at 2). On March  
 14 24, 2023, the Court granted Plaintiffs leave to amend. (ECF No. 77).

15 On March 28, 2023, Plaintiffs filed their Third Amended Complaint. (ECF No. 78). The  
 16 Court subsequently denied as moot Defendants’ motion to dismiss as it no longer pertained to the  
 17 operative pleading. (ECF No. 79). The Court noted that Defendants, in their response to  
 18 Plaintiffs’ motion for leave to amend, “appear[ed] to have acknowledged that [the Third]  
 19 amended complaint would moot their prior motion [to dismiss].” (*Id.*)

### 20 **C. Third Amended Complaint**

21 In the Third Amended Complaint (ECF No. 78), Plaintiffs assert claims against the  
 22 USCIS Defendants<sup>4</sup> and the State Department Defendants<sup>5</sup> for violations of the APA, their Fifth  
 23 Amendment due process and equal protection rights, and 8 U.S.C. § 1503. (ECF No. 78 at 50–  
 24 72).

25 Plaintiffs allege in the Third Amended Complaint that the State Department issued

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26 <sup>4</sup> The USCIS Defendants are: USCIS; USCIS Director Ur Jaddou; USCIS Western District Director  
 27 Monica Toro; USCIS Fresno Field Office; USCIS Fresno Field Office Director Lynn Q. Feldman; and  
 28 immigration services officer Monica B. Lugo. (ECF No. 78 at 10–11).

<sup>5</sup> The State Department Defendants are: the State Department; Secretary of State Antony J. Blinken;  
 National Passport Center Director Karen A. Pizza; Diplomatic Security Service Agent “John Doe”; and  
 Does 1-15. (ECF No. 78 at 11).

1 Muneera a U.S. passport in August 2017 pursuant to INA § 309 “as a child born out of wedlock  
2 as a result of her father’s polygamous marriages, legal in Yemen but not recognized by United  
3 States law.” (ECF No. 78 at 14). Plaintiffs allege that this passport was issued after “a Consular  
4 Officer, a Section Chief, a supervising evaluator from Washington and a Washington secondary  
5 review” all determined—based on evidence Muneera submitted, DNA testing, and interviews  
6 with Muneera and Nassar—that Muneera was a United States citizen. (*Id.*)

7 The Third Amended Complaint then alleges the following timeline regarding the USCIS  
8 Defendants’ adjudication of the N-600K applications Muneera filed on behalf of her children: (1)  
9 the applications were sent to the USCIS Fresno Field Office for processing; (2) USCIS requested  
10 additional evidence regarding Nassar’s physical presence in the United States and Muneera’s date  
11 of birth; (3) Plaintiffs responded to the requests for evidence; (4) USCIS denied all four N-600K  
12 applications on November 9, 2018; (5) Plaintiffs filed the instant lawsuit; (6) USCIS  
13 administratively reopened the N-600K applications and once again requested additional evidence;  
14 (7) Plaintiffs responded to the requests for evidence; (8) USCIS issued Notices of Intent to Deny  
15 (“NOIDs”) the reopened N-600K applications; (9) Plaintiffs responded to the NOIDs; and (10) on  
16 January 10, 2022, USCIS denied the administratively reopened N-600K applications. (*Id.* at 13–  
21).

17 The Third Amended Complaint alleges that after the reopened N-600K applications were  
18 denied, the State Department revoked Muneera’s U.S. passport on March 10, 2022, by sending a  
19 written notice to her attorney. (*Id.* at 21). Plaintiffs allege that this notice was improperly served  
20 and that Muneera’s passport “was revoked without providing a hearing for review as required  
21 under” 8 U.S.C. § 1504. (*Id.* at 22). The Third Amended Complaint further alleges that on  
22 September 6, 2022, the State Department issued Muneera an amended notice of revocation which  
23 stated:

24 Your passport application and supporting documents do not provide consistent  
25 information regarding your date of birth, the identity of your biological mother, or  
26 the dates of marriage and divorce/death of your father’s wives. In addition, the  
physical presence statement provided by your father was not a detailed statement  
which documented his periods and places of his physical presence and residences  
in the United States with public records to support his claim.

27 (*Id.* at 22–23). Plaintiffs assert that the State Department improperly revoked Muneera’s passport  
28

as both revocation notices “suffer[] from many of the same infirmities and logical defects,” that any supposed inconsistencies in Muneera’s date of birth are “immaterial,” and that Nassar “had more than adequate physical presence to transfer citizenship to both his daughter and his grandchildren.” (*Id.* at 23–24).

Plaintiffs also assert in the Third Amended Complaint that Defendants have a “pattern and practice of stymying family unification of Yemeni-American[s] and preventing transmission of citizenship to children of Yemeni-American citizens.” (*Id.* at 24–30). Plaintiffs contend Defendants have implemented policies and practices “targeting Yemeni-Americans and their family members,” that they have used “biometric, DNA collection, and AI databases to discriminate” against Yemeni-American citizens and their families, and that they have adopted “discriminatory procedures and policies . . . that in effect [have] create[d] a substantially higher and different standard of proof for N-600K Petitioners of Yemeni race and/or national origin.” (*Id.* at 30–46).

#### **D. Procedural History after filing of the Third Amended Complaint**

On May 5, 2023, Defendants moved to dismiss the Third Amended Complaint under Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. (ECF No. 84). While the motion to dismiss was still pending, Defendants filed an unopposed motion to stay the case because the parties were engaged in settlement discussions. (ECF No. 91). On February 29, 2024, the Court stayed the case. (ECF No. 92).

On June 28, 2024, the parties filed a joint status report stating that they were unable to reach a settlement. (ECF No. 95). The parties apprised the Court of the current status of the administrative proceedings, specifically that: (1) USCIS had *sua sponte* reopened and approved N.M.Q.A(1) and N.M.Q.A.(2)’s N-600K applications; (2) USCIS also approved Muneera’s own N-600K application; (3) certificates of citizenship were issued to Muneera, N.M.Q.A(1), and N.M.Q.A.(2) on January 17, 2024; and (4) the State Department issued Muneera a new U.S. passport on January 18, 2024. (*Id.*) The parties reported that USCIS did not reopen Alia and Ramzi’s N-600K applications. (*Id.* at 2). Considering these factual developments, the parties agreed that Defendants’ pending motion to dismiss the Third Amended Complaint was moot. (*Id.* at 4). The parties noted that Plaintiffs intended to move for leave to file a fourth amended

complaint and that Defendants intended to file another motion to dismiss solely under Rule 12(b)(1). (*Id.* at 4–5). Upon review of the joint status report, the Court lifted the stay and denied Defendants’ pending motion to dismiss (ECF No. 84) as moot. (ECF Nos. 97, 100).

#### **E. Pending Motions**

On June 28, 2024, Defendants moved to dismiss the Third Amended Complaint under Rule 12(b)(1), arguing that Plaintiffs’ claims are subject to dismissal because they are either moot or lack redressability. (ECF No. 96).

Rather than file a response to the motion to dismiss, Plaintiffs filed a motion for leave to amend (ECF No. 101) along with a proposed Fourth Amended Complaint (ECF No. 101-1). In their motion, Plaintiffs seek leave to amend to address the recent developments at the administrative level. Specifically, Plaintiffs seek leave to:

remove several causes of action which have been rendered moot by the actions of Defendants, to add additional facts surrounding the decision on [Alia and Ramzi’s] N-600Ks and subsequently filed Forms I-131 and their denial, and [] their effects on the remaining causes of action; to adjust the APA causes of action to address the Court’s equitable estoppel authority; to drop two Plaintiffs [N.M.Q.A.(1) and N.M.Q.A.(2)] whose relief has been accorded in full; and to adjust the relief sought in accordance with the current status of proceedings.

(ECF No. 101 at 2). Defendants filed a response in opposition to Plaintiffs’ motion for leave to amend, arguing that granting Plaintiffs leave to amend would be futile and cause undue delay and prejudice to Defendants. (ECF No. 103 at 3–5). Plaintiffs filed a reply. (ECF No. 106).

On September 27, 2024, the Court held a hearing on Plaintiffs’ motion for leave to amend and Defendants’ motion to dismiss. Upon consideration of the briefing and the parties’ arguments during the hearing, the Court issues the following findings and recommendations.

## **II. MOTION TO AMEND**

The Court begins by addressing Plaintiffs’ motion for leave to amend to file their proposed Fourth Amended Complaint.

### **A. Applicable Legal Standard**

Federal Rule of Civil Procedure 15(a) permits a plaintiff to amend the complaint once as a matter of course; further amendment requires the defendant’s consent or leave of court, but “[t]he court should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2); *see Foman v. Davis*, 371 U.S. 178, 182 (1962). “Although leave to amend should be given freely, denying leave



is not an abuse of discretion if it is clear that granting leave to amend would have been futile.” Lathus v. City of Huntington Beach, 56 F.4th 1238, 1243 (9th Cir. 2023) (internal citation and quotation marks omitted); see also Wheeler v. City of Santa Clara, 894 F.3d 1046, 1059 (9th Cir. 2018) (“Leave to amend may be denied if the proposed amendment is futile or would be subject to dismissal.”). In addition, “a district court has discretion to deny leave to amend when there are countervailing considerations such as undue delay, prejudice, [or] bad faith.” Ctr. for Biological Diversity v. United States Forest Serv., 80 F.4th 943, 956 (9th Cir. 2023) (internal citation and quotation marks omitted).

### **B. Proposed Fourth Amended Complaint**

In their motion, Plaintiffs seek leave to amend to address the recent developments at the administrative level. Specifically, Plaintiffs seek leave to omit several causes of action that they assert no longer apply in this case, to “adjust[] the requested relief as to several causes of action pertaining to [Alia and Ramzi],” and to remove N.M.Q.A.(1) and N.M.Q.A.(2) as parties because “their cases have been resolved.” (ECF No. 106 at 4). Plaintiffs argue that their proposed amendments are not futile or made in bad faith and will not cause undue delay or prejudice to Defendants. (ECF No. 101 at 6–8).

With their motion to amend, Plaintiffs lodged a proposed Fourth Amended Complaint (ECF No. 101-1). In the proposed Fourth Amended Complaint, Plaintiffs<sup>6</sup> name the same two sets of Defendants – the USCIS Defendants and the State Department Defendants – that were named in the Third Amended Complaint. (*Id.* at 8–10).

In addition to reasserting the facts previously alleged in the Third Amended Complaint, the proposed Fourth Amended Complaint includes the recent events at the administrative level—i.e., the recent approval of N.M.Q.A.(1) and N.M.Q.A.(2)’s N-600K applications, the approval of Muneera’s own N-600K application, the issuance of certificates of citizenship to Muneera, N.M.Q.A.(1) and N.M.Q.A.(2), and the issuance of a new U.S. passport to Muneera. (*Id.* at 12–25). As to Alia and Ramzi’s N-600K applications, Plaintiffs allege in the proposed Fourth

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<sup>6</sup> Although the caption of the proposed Fourth Amended Complaint includes N.M.Q.A.(1) and N.M.Q.A.(2) as plaintiffs, the body of the proposed complaint identifies only Muneera, Alia, Ramzi, and Nassar as plaintiffs. See ECF No. 101-1 at 1–2, 8. As previously noted, Nassar, N.M.Q.A.(1), and N.M.Q.A.(2) are no longer parties in this lawsuit. See supra n.2.



1 Amended Complaint that Defendants refused to reopen Alia and Ramzi’s N-600K applications on  
2 the basis that Alia and Ramzi have “aged out” and are no longer statutorily eligible for relief,  
3 which Plaintiffs assert is the result of Defendants’ “delays, revocations, and other bad faith  
4 actions.” (*Id.* at 24). Plaintiffs assert that Defendants “intentionally timed out the denial of [Alia  
5 and Ramzi’s] N-600K applications in order to deprive” them of their citizenship. (*Id.* at 25–26).  
6 Plaintiffs further allege that “Defendants’ actions amount to affirmative misconduct to delay the  
7 applications . . . until [Alia and Ramzi] aged out.” (*Id.* at 40).

8 Plaintiffs further allege that Muneera filed Form I-130 Petitions for Alien Relative (“I-130  
9 petitions”) on behalf of Alia and Ramzi on June 9, 2023. (*Id.* at 24). After the I-130 petitions were  
10 approved, Alia and Ramzi filed I-131 Applications for Humanitarian Parole “to come to the  
11 United States while their [I-130 petitions] are processing, so they would not be separated from  
12 their family.” (*Id.* at 25). Plaintiffs allege that counsel for Defendants notified them on May 3,  
13 2024 that the humanitarian parole applications “were denied but did not explain the basis for the  
14 denial[,] [o]nly that the parole requirements had not been met.” (*Id.*)

15 Finally, Plaintiffs allege in the proposed Fourth Amended Complaint that Defendants have  
16 a “pattern and practice of stymying family unification of Yemeni-Americans and preventing  
17 transmission of citizenship to children of Yemeni-American citizens.” (*Id.* at 26–33). Plaintiffs  
18 assert Defendants have implemented policies and practices “targeting Yemeni-Americans and  
19 their family members,” which “in effect [have] create[d] a substantially higher and different  
20 standard of proof for N-600K Petitioners of Yemeni race and/or national origin.” (*Id.* at 33, 37).

21 Plaintiffs raise seven claims in the proposed Fourth Amended Complaint. Plaintiffs assert  
22 in Count 1 that Defendants’ revocation of Muneera’s previous U.S. passport violated the APA  
23 and their Fifth Amendment due process rights. (*Id.* at 41–42). In Counts 2 and 3, Plaintiffs assert  
24 that the USCIS Defendants’ adjudication of Alia and Ramzi’s N-600K applications violated the  
25 APA. (*Id.* at 43–44). Notably, in Count 2, Plaintiffs ask the Court to apply equitable estoppel to  
26 “reopen and retroactively grant” Alia and Ramzi’s N-600K applications. (*Id.* at 44). In Counts 4  
27 and 5, Plaintiffs raise Fifth Amendment procedural due process and equal protection claims  
28 against all Defendants. (*Id.* at 47–55). In Count 6, Plaintiffs assert an APA claim arising from the  
denial of Alia and Ramzi’s humanitarian parole applications. (*Id.* at 56–58). And in Count 7,

1 Plaintiff assert a claim under the Declaratory Judgment Act. (Id. at 59).

2 **C. Analysis**

3 **1. Timeliness of Amendment**

4 As an initial matter, the Court addresses Defendants' contention that Plaintiffs should be  
5 denied leave to amend because "this case has been pending since October 2020 without having  
6 ever advanced past the pleading stage." (ECF No. 103 at 5). In response, Plaintiffs argue that they  
7 have not unduly delayed seeking leave to amend as their proposed amendments address recent  
8 developments at the administrative level that took place after the Third Amended Complaint was  
9 filed. (ECF No. 101 at 6–7).

10 The Court does not find Defendants' argument persuasive regarding the timeliness of the  
11 amendment. During the pendency of this lawsuit, the parties have repeatedly requested extensions  
12 of time or stays to permit the parties to resolve this matter through the administrative process.  
13 While the extensions and stays have resulted in the case remaining pending for a lengthy period,  
14 Defendants do not allege, nor does the Court find, that there has been any unreasonable delay or  
15 lack of diligence on the part of Plaintiffs in prosecuting this action.

16 Moreover, the recent developments in the administrative process have necessitated the  
17 need for an amendment. The re-issuance of a U.S. passport to Muneera, the approval of  
18 N.M.Q.A.(1) and N.M.Q.A(2)'s N-600K applications, and the refusal to reopen Alia and Ramzi's  
19 N-600K applications are all significant factual developments that have occurred since the Third  
20 Amended Complaint was filed. The proposed Fourth Amended Complaint alleges these  
21 additional facts and more importantly, omits those causes of action that are now moot as a result  
22 of the recent developments at the agency level.

23 The Court also finds that an amendment at this juncture will not unduly prejudice  
24 Defendants as this case is still in its procedural infancy, seeing that the Court has not yet issued a  
25 scheduling order and discovery has not commenced. Thus, Defendants have failed to show any  
26 undue delay that would warrant denying Plaintiffs leave to amend.

27 **2. Futility**

28 The Court likewise is not persuaded by Defendants' contention that amendment would be  
futile because Plaintiffs' claims in the proposed Fourth Amended Complaint are now either moot

1 or not redressable, for the reasons set forth more fully below.

2 *a. Plaintiff's Claims Stemming from the Denial of Alia and Ramzi's N-600K*  
 3 *Applications*

4 Turning first to Plaintiffs' claims regarding Alia and Ramzi, the proposed Fourth  
 5 Amended Complaint contains several causes of action stemming from the denial of Alia and  
 6 Ramzi's N-600K applications. Defendants argue that these claims are not redressable because  
 7 applicants seeking derivative citizenship under INA § 322 must be under the age of eighteen, and  
 8 since Alia and Ramzi have aged out, the Court cannot equitably grant them relief in contravention  
 9 of the statutory age requirement. (ECF No. 96 at 8–9; ECF No. 103 at 3).

10 In support of this argument, Defendants cite to an unpublished case from the Second  
 11 Circuit, Keane v. Dibbins, 2023 WL 6785370 (2d Cir. Oct. 13, 2023). In Keane, the plaintiffs –  
 12 who like Alia and Ramzi had aged out – argued they were entitled to mandamus relief and  
 13 equitable estoppel because they were under the age of eighteen at the time they applied for  
 14 derivative citizenship through the N-600 process. The Second Circuit determined that the  
 15 plaintiffs failed to meet “the highly demanding mandamus standard” because the statutory  
 16 scheme “is ambiguous as to whether the age requirement must be met only at the time the  
 17 application is submitted or also up through to the time that application is adjudicated.” Id. at \*3.  
 18 The Second Circuit also held that plaintiffs were not entitled to equitable relief because “courts  
 19 cannot grant citizenship through their equitable powers” in violation of statutory limitations. Id. at  
 \*4 (quoting INS v. Hizam v. Kerry, 747 F.3d 102, 110 (2d Cir. 2014)).

20 In response, relying on Harriot v. Ashcroft, 277 F. Supp. 2d 538 (E.D. Pa. 2003), and  
 21 Petition of Tubig on Behalf of Tubig, 559 F. Supp. 2 (N.D. Cal. 1981), Plaintiffs argue that courts  
 22 have the “equitable authority to grant citizenship where an application was timely filed before  
 23 aging out, [but] where the government engaged in ‘affirmative misconduct’ in order to age out the  
 24 applicant.” (ECF No. 106 at 3). In Tubig, the district court found that immigration officials were  
 25 estopped from denying the petitioner’s application for naturalization of his son because the  
 26 petitioner’s “failure to complete the application process before his son reached the cut-off age of  
 27 eighteen was due to the INS’ failure to follow its own regular procedures.” 559 F. Supp. at 3. The  
 28 district court explained: “The INS is entitled—indeed, is required—to enforce the statutory

1 requirements under which it operates. It may not, however, by reason of its own unjustified delay  
 2 or error, cause an alien to run afoul of regulations upon which the INS then relies in denying the  
 3 alien the status to which he is entitled.” Id. at 4. In reaching this conclusion, Tubig relied on  
 4 Villena v. INS, 622 F.3d 1352 (9th Cir. 1980), in which the Ninth Circuit held that “the rule of  
 5 estoppel may be invoked against the government in immigration cases where there is affirmative  
 6 misconduct.” Id. at 1360; see also Rahman v. Holder, 434 F. App’x 651 (9th Cir. 2011) (“The  
 7 government in immigration cases may be subject to equitable estoppel if it has engaged in  
 8 affirmative misconduct.”).

9 During the hearing, Defendants appeared to concede that courts may grant the requested  
 10 equitable relief in certain circumstances. However, Defendants argued that the facts will show  
 11 that there was not any unreasonable delay or affirmative misconduct on the part of Defendants.  
 12 See Jaa v. U.S. I.N.S., 779 F.2d 569, 572 (9th Cir. 1986) (for equitable estoppel to apply, the  
 13 “affirmative misconduct must be more than negligence[;] [m]ere unexplained delay does not  
 14 show misconduct.”) (internal citations omitted)). Defendants asserted in their papers and during  
 15 the hearing that the adjudicative timeline establishes that there were no unreasonable or  
 16 unexplained delays in their processing of Alia and Ramzi’s N-600K applications.

17 Plaintiffs disagree, pointing to allegations in their proposed Fourth Amended Complaint  
 18 that USCIS improperly denied the N-600K applications initially, that the State Department  
 19 revoked Muneera’s passport without any legitimate basis to do so and then intentionally delayed  
 20 the reissuance of her passport until after Alia and Ramzi aged out, and that USCIS intentionally  
 21 waited until Alia and Ramzi aged out before it approved N.M.Q.A.(1) and N.M.Q.A.(2)’s N-  
 22 600K applications. (See ECF No. 101-1 at 15–16, 21–26, 40–44).

23 Construing Plaintiffs’ factual allegations in the proposed Fourth Amended Complaint as  
 24 true, as the Court must do at this stage, Plaintiffs have sufficiently alleged that they are entitled to  
 25 equitable estoppel because Defendants have engaged in affirmative misconduct. Thus, while  
 26 Defendants may argue that the evidence will not support Plaintiffs’ allegations, such argument is  
 27 not a basis to deny leave for Plaintiffs to file their Fourth Amended Complaint.

28 Additionally, Defendants have not challenged Plaintiffs’ cause of action for denial of  
 equal protection related to the initial denial of Alia and Ramzi’s N-600K applications. While the

1 Court appreciates the legal hurdles to Plaintiffs' claims stemming from the denial of Alia and  
2 Ramzi's N-600K applications, it cannot find based on this record that these claims are futile.

3 The Court therefore recommends granting the motion to amend with respect to these  
4 claims.

5 *b. Plaintiff's Claim in Count 1 regarding the Revocation of Muneera's U.S.*  
6 *Passport*

7 Defendants next assert that Plaintiffs' due process claim in Count 1 concerning the  
8 previous revocation of Muneera's U.S. passport is moot because Muneera has been reissued a  
9 passport.

10 In response, Plaintiffs argue "there is an exception to the mootness doctrine for situations  
11 that are "capable of repetition yet evading review." United States v. Brandau, 578 F.3d 1064,  
12 1067 (9th Cir. 2009) (quoting Gerstein v. Pugh, 420 U.S. 103, 111 n. 11 (1975)). For the  
13 controversies "capable of repetition, yet evading review" exception to the mootness doctrine to  
14 apply, a plaintiff must show: "(1) the challenged action is in its duration too short to be fully  
15 litigated prior to cessation or expiration," and (2) "there is a reasonable expectation that the same  
16 complaining party will be subject to the same action again." Kingdomware Techs., Inc. v. United  
States, 579 U.S. 162, 170 (2016) (internal citations omitted).

17 Plaintiffs contend that the above exception to the mootness doctrine applies here because  
18 the State Department unreasonably revoked Muneera's passport and later reversed its decision  
19 based on the same information that Muneera had initially submitted when she applied for the  
20 passport. Absent Court order, Plaintiffs argue that Muneera could be subject to the same action  
21 again by Defendants. And the proposed Fourth Amended Complaint asserts the existence of  
22 policies and practices implemented by Defendants to denaturalize and revoke the passports of  
23 Yemeni-American citizens.

24 While Defendants argued in the hearing that the claim is moot because the government  
25 has determined Muneera is entitled to a U.S. passport, Defendants fell short of formally agreeing  
26 that Muneera is entitled to a court order declaring the same.

27 Thus, Plaintiffs' due process claim in Count 1 is not clearly moot. Because the issuance of  
28 a Court order would redress the issue raised in this claim, the Court recommends granting

1 Plaintiffs leave to amend this claim.

2 *c. Plaintiffs' Claim Regarding Alia and Ramzi's Humanitarian Parole*  
 3 *Applications (Count 6)*

4 Finally, the proposed Fourth Amended Complaint asserts a cause of action under the APA  
 5 stemming from the denial of Alia and Ramzi's humanitarian parole applications.<sup>7</sup> Specifically,  
 6 Plaintiffs allege in Count 6 that "Defendants' denial of [Alia and Ramzi's] request for parole  
 7 under 212(d)(5) violates the APA as arbitrary, capricious, and [constitutes] an abuse of  
 8 discretion." (ECF No. 101-1 at 58). Defendants argue that it would be futile to grant Plaintiffs  
 9 leave to add this cause of action because "the denial of a parole application is a discretionary  
 10 agency decision over which this Court lacks subject matter jurisdiction." (ECF No. 103 at 4).  
 11 Plaintiffs did not respond to this argument in their reply brief. (ECF No. 106 at 4).

12 The Court agrees with Defendants that it would be futile for Plaintiffs to add a cause of  
 13 action concerning the agency's decision to deny Alia and Ramzi's parole applications. As  
 14 Defendants pointed out in their briefing and the hearing, courts may not review discretionary  
 15 agency decisions. See 8 U.S.C. § 1252(a)(2)(B)(ii) (judicial review is precluded over decisions  
 16 "under this subchapter" that are vested "in the discretion of the Attorney General or the Secretary  
 17 of Homeland Security[.]"); see also 5 U.S.C. § 701(a)(2) (judicial review is precluded under the  
 18 APA where "agency action is committed to agency discretion by law"). The decision to grant or  
 19 deny a parole application is a discretionary decision. See 8 U.S.C. § 1182(d)(5)(A) ("The  
 20 Attorney General may . . . in his *discretion* parole into the United States temporarily under such  
 21 conditions as he may prescribe only on a case-by-case basis . . .") (emphasis added). Because  
 22 parole decisions are not subject to judicial review, it would be futile to allow Plaintiffs to assert a  
 23 claim challenging the discretionary decision to deny humanitarian parole to Alia and Ramzi. See  
 24 Vazquez Romero v. Garland, 999 F.3d 656, 665 (9th Cir. 2021) ("[T]he jurisdiction-stripping  
 25 provision of § 1252(a)(2)(B)(ii) applies to discretionary parole decisions under § 1182(d)(5).").

26 Indeed, the Supreme Court very recently confirmed the legal principle that discretionary  
 27 agency decisions are not subject to judicial review. See Bouarfa v. Mayorkas, No. 23-583, 2024

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28 <sup>7</sup> The parties disagree as to whether USCIS has in fact denied Alia and Ramzi's parole applications or if they remain pending.

WL 5048700, at \*7 (U.S. Dec. 10, 2024) (“§ 1252(a)(2)(B)(ii) bars judicial review of decisions ‘made discretionary by legislation.’”).

Thus, the Court recommends denying Plaintiffs leave to add a cause of action in their Fourth Amended Complaint concerning the denial of Alia and Ramzi’s parole applications.

#### **D. Recommendation**

Accordingly, based on the foregoing, the Court recommends granting Plaintiffs’ motion for leave to file a Fourth Amended Complaint and permitting Muneera, Alia, and Ramzi to proceed on the following claims:

- Fifth Amendment Due Process claim against all Defendants (Count 1);
- violation of APA, 5 U.S.C. § 706(1), against USCIS Defendants (Count 2);
- violation of APA, 5 U.S.C. § 706(2), against USCIS Defendants (Count 3);
- Fifth Amendment Procedural Due Process claim against all Defendants (Count 4);
- Fifth Amendment Equal Protection claim against all Defendants (Count 5); and
- Declaratory Judgment Act against all Defendants (Count 7).

### **III. MOTION TO DISMISS**

Defendants’ motion to dismiss seeks dismissal of Plaintiffs’ Third Amended Complaint on grounds of mootness and redressability. (ECF No. 96). Defendants specifically argue that Muneera’s claims are now moot because she has been issued a certificate of citizenship and U.S. passport. Defendants also argue that Plaintiffs’ claims stemming from the denial of Alia and Ramzi’s N-600K applications are not redressable because they have “aged out” and are no longer statutorily eligible for relief through the N-600K process.<sup>8</sup>

As discussed above, rather than file an opposition to Defendants’ motion to dismiss, Plaintiffs filed their motion for leave to file a Fourth Amended Complaint.

Defendants ask the Court to treat their motion to dismiss as unopposed because Plaintiffs elected to file a motion for leave to amend rather than a response in opposition to the motion to dismiss. The Court declines to do so. As can be seen by the analysis above, the parties’ arguments in connection with the motion for leave to amend address the same substantive arguments

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<sup>8</sup> Defendants also raise mootness arguments with respect to N.M.Q.A.(1) and N.M.Q.A.(2), which the Court does not consider because N.M.Q.A.(1) and N.M.Q.A.(2) are no longer parties in this lawsuit.



1 regarding mootness and redressability that are raised in the motion to dismiss. Additionally,  
2 Defendants do not dispute that their motion to dismiss will be rendered moot if the proposed  
3 Fourth Amended Complaint is allowed to proceed. See Ramirez v. Cnty. of San Bernardino, 806  
4 F.3d 1002, 1008 (9th Cir. 2015) (“Because the Defendants’ motion to dismiss targeted the  
5 Plaintiff’s First Amended Complaint, which was no longer in effect, we conclude that the motion  
6 to dismiss should have been deemed moot[.]”).

7 Accordingly, the Court recommends denying Defendants’ motion to dismiss Plaintiff’s  
8 Third Amended Complaint as moot.

#### 9 **IV. CONCLUSION AND RECOMMENDATION**

10 Based on the foregoing, it is hereby RECOMMENDED that:

11 1. Plaintiffs’ motion for leave to file a Fourth Amended Complaint (ECF No. 101) be  
12 GRANTED in part as follows:

- 13 a. The Clerk of Court be directed to file the Fourth Amended Complaint (ECF  
14 No. 101-1);
- 15 b. Plaintiffs be permitted to proceed on the following claims in the Fourth  
16 Amended Complaint: Fifth Amendment Due Process claim against all  
17 Defendants (Count 1); violation of APA, 5 U.S.C. § 706(1), against USCIS  
18 Defendants (Count 2); violation of APA, 5 U.S.C. § 706(2), against USCIS  
19 Defendants (Count 3); Fifth Amendment Procedural Due Process claim against  
20 all Defendants (Count 4); Fifth Amendment Equal Protection claim against all  
21 Defendants (Count 5); and Declaratory Judgment Act against all Defendants  
22 (Count 7);
- 23 c. All other claims in the Fourth Amended Complaint be dismissed.

24 2. Defendants’ motion to dismiss Plaintiff’s Third Amended Complaint (ECF No. 96) be  
25 DENIED as moot.

26 These findings and recommendations are submitted to the United States District Judge  
27 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30)  
28 days after being served with these findings and recommendations, any party may file written  
objections with the Court. Such a document should be captioned “Objections to Magistrate

1 Judge's Findings and Recommendations." The objections shall not exceed more than fifteen (15)  
2 pages, including exhibits. Any response to the objections shall be served and filed within fourteen  
3 (14) days after service of the objections.

4 The parties are advised that failure to file objections within the specified time may result  
5 in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838–39 (9th Cir. 2014)  
6 (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

7 IT IS SO ORDERED.

8  
9 Dated: **December 27, 2024**

/s/ Eric P. Grogan  
UNITED STATES MAGISTRATE JUDGE